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CHARLES ELMORE

IN THE

# Supreme Court of the United States

No. 393.

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GYNTHER STORAASLI,

*Appellant,*

vs.

STATE OF MINNESOTA,

*Appellee.*

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## BRIEF FOR THE APPELLANT, GYNTHER STORAASLI.

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### OPIONION BELOW.

The opinion of the Supreme Court of Minnesota is reported in 180 Minn. 241, 230 N. W. 572.

### JURISDICTION.

The opinion of the Supreme Court of Minnesota was entered on April 25, 1930 (R. 9). The order denying the petition for reargument was entered May 23, 1930 (R. 15). The judgment was entered May 23, 1930 (R. 16). Petition for appeal was filed August 18, 1930 (R. 16), and notice of probable jurisdiction was given on November 3, 1930, under the provisions of

Sections 861 (a) and 861 (b) of Title 28 of the United States Code, as amended April 26th, 1928, and under Rule 46 of the Rules of this Court effective July 1, 1928.

## THE QUESTIONS PRESENTED.

1. Do the provisions of Sections 2674-76, 2684, 2684-1, 2684-2, 2687 and 2691 of the General Statutes of Minnesota, 1927, as amended Laws 1929, Chapter 335, as applied to an automobile owned, kept and operated on the United States Military Reservation at Fort Snelling, Minnesota, by an officer of the United States Army stationed thereon, constitute a tax on the property of such officer so as to deny him due process of law under the provisions of Article XIV of the amendments to the Constitution of the United States?

2. Do the provisions of the statute as applied to such an automobile constitute an unfair discrimination against such an officer in favor of residents of Minnesota by imposing on him a greater burden for the privilege of using the highways of the State than is imposed upon residents of Minnesota, so as to deny him the equal protection of the laws under the provisions of Article XIV of the amendments to the Constitution of the United States?

3. Do the provisions of this statute as applied to such an automobile constitute an unfair discrimination against such an officer in favor of residents of neighboring States by imposing on him a greater burden for the privilege of using the highways of the State than is imposed upon residents of neighboring States, so as to deny him the equal protection of the laws under the provisions of Article XIV of the amendments to the Constitution of the United States?

## STATUTES INVOLVED.

The principal statutes involved are set forth in an appendix to the Statement Showing Basis of Jurisdiction. They are Sections 2674-76, 2684, 2684-1, 2684-2, 2687 and 2691 of the General Statutes of Minnesota, 1927, as amended Laws 1929, Chapter 335.

## STATEMENT.

By Chapter 57 of the General Laws of Minnesota of 1889, the State of Minnesota ceded to the United States jurisdiction of the territory constituting the Fort Snelling Military Reservation. The cession was on one condition—that the public highways across the reservation be kept open for public travel—and contained two reservations: (1) Concurrent jurisdiction to serve process, civil and criminal, of the State, and (2) Concurrent jurisdiction to arrest persons charged with crime against the laws of the State. There was no other limitation on the cession. The Reservation is still occupied by the military force of the United States and jurisdiction of it has been exercised by the Federal government to the exclusion of the State ever since the Act of Cession. The power of government is vested in the commanding officers of the Military Forces, subject to the Acts of Congress and Orders of the War Department (R. page 2).

Section 4 of Article 7 of the Constitution of Minnesota provides that a member of the military forces of the United States shall not be deemed a resident of the State in consequence of being stationed within the same.

Article 16 of the amendments to the Constitution of Minnesota provides for the establishment of a trunk highway system throughout the State. Section 3 thereof reads as follows:

"Taxation of motor vehicles—The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of this state, on a more onerous basis than other personal property; provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident of the state, and transiently or temporarily using the streets and highways of the state. The proceeds of such tax shall be paid in to said trunk highway sinking fund."

In pursuance of this Article, the State Legislature enacted a statute providing for the imposition of a motor vehicle registration tax (Sections 2672 to 2704 incl. General Statutes Minnesota 1927, as amended Session Laws 1929, Chapter 335. See pp. 19 et seq. of Statement of Probable Jurisdiction). Pursuant to this statute, the Secretary of State filed in the office of the Clerk of the District Court of Ramsey County a list of motor vehicles on which the tax and penalty for 1929 appeared delinquent. The Appellant's vehicle was included in this list. Within the proper time the Appellant filed his answer to the notice of the delinquent motor vehicle tax. The answer denied that any tax or penalty was due the State of Minnesota (R. pages 1-2).

It then alleged that at all times covered by said notice the defendant has been and now is the sole owner of the motor vehicle; that he now is and at all times covered by said notice was a non-resident of the State of Minnesota and a member of the military forces of the United States quartered and resident upon the United States Military Reservation at Fort Snelling; that the motor vehicle of the defendant has not been operated

for hire, nor has it been present within the jurisdiction of the State of Minnesota upon its roads, highways, or streets, for any period of ten days; that it is not now operated on the roads, highways or streets of the State except as a visitor for brief periods (R. page 2).

It then alleged that the Fort Snelling Military Reservation is and was a territory solely and exclusively under the control of the Government of the United States; that all governmental functions, including police power, traffic control and maintenance of highways, are vested in and exercised by the Commanding Officer of the Reservation under the laws of the United States to the total exclusion of the governmental control of the State; that the Reservation is not a part of the State of Minnesota (R. page 2).

The answer further alleges that the Commanding Officer of the Reservation has created and maintained, in pursuance of the power vested in him, a complete system of automobile registration with rules and regulations, and that the motor vehicle which is the subject of this litigation has been duly and properly registered under such laws and regulations; that it has been provided with license plates and a registration certificate issued therefor (R. pages 2-3).

The defendant also alleges that he is willing to comply with all the laws of the State of Minnesota applicable to non-residents whenever non-residents have occasion to use the roads and public streets, and has notified the proper officers of the State, through the Registrar of Motor Vehicles at the Reservation of his readiness to comply therewith; that he has at all times carried the proper plates issued to him, and has complied with all the traffic laws and regulations of the State when he has operated the motor vehicle upon the highways of the State (R. page 3).

Upon filing the answer, the plaintiff moved for judgment on the pleadings (R. page 4). The motion was granted (R. pages 5-6). Judgment was thereupon entered for the tax and penalty (R. p. 6). From this judgment Appellant appealed to the Supreme Court of Minnesota (R. pages 7-8).

The Supreme Court affirmed the judgment of the District Court (R. pages 8-12). An application for rehearing was made by the Appellant (R. pages 12-15). This was denied May 23, 1930 (R. page 15). Judgment was entered the same date (R. page 16) from which the appeal to this Court was taken August 15, 1930 (R. pages 18-21). The judgment appealed from was final so far as the State Courts are concerned.

## SUMMARY OF ARGUMENT.

The State of Minnesota may not tax property located on the Fort Snelling Reservation. Regardless of how the tax in question may be characterized by the State Supreme Court, its basis and measure show it in fact to be a property tax, and as such it is invalid as applied to the Appellant. Even taking the tax as characterized by the State Court, it is partly a property tax and the element of property tax is inseparable. Therefore the whole must fall, as denying to the Appellant due process of law.

*American Railway Express Co. v. Hahn*, 173 Minn. 72, 216 N. W. 542 (1927).

Even regarded as a privilege tax, the exaction imposes a more onerous burden on non-residents than is imposed on residents, by granting to residents an exemption from other personal property taxes which is not granted to non-residents, and by imposing a higher rate on non-residents for the privilege of

using the highways than is imposed on residents. These differences deny to the Appellant the equal protection of the laws.

The tax further discriminates against the Appellant by denying to him an exemption which is granted to residents of neighboring States and Countries. There is no reasonable basis for the differentiation, and therefore for this reason also, as applied to the Appellant, the tax is invalid.

## ARGUMENT.

### I.

THE AUTOMOBILE IN QUESTION IS NOT SUBJECT TO BE TAXED AS PROPERTY. THE MINNESOTA MOTOR VEHICLE TAX IS A PROPERTY TAX, AND AS SUCH CANNOT BE LEVIED ON THE CAR IN QUESTION.

The car in question is owned and kept upon the Fort Snelling Reservation, which is not within the jurisdiction of Minnesota, but is exclusively within the jurisdiction of the United States. The car has never been operated for hire within the State of Minnesota, nor has it ever been present within the State (as distinguished from the Reservation) for any period of ten days. It has never been operated on Minnesota highways except as a visitor for brief periods (R. page 2).

The State Supreme Court conceded that the State had no jurisdiction to tax property located on the Fort Snelling Reservation. As against the Appellant, however, it held that the tax was imposed as a privilege tax on use of the highways (R. pages 10-11).

While this Court is concluded as to the mere construction of the terms and incidence of a state tax statute, it is not con-

cluded by the State Court's characterization of the scheme of taxation in determining whether such scheme deprives a party of rights secured by the Constitution of the United States.

*St. Louis S. W. Ry. v. Arkansas*, 235 U. S. 350 (1914).

*St. Louis Cotton Compress Company v. Arkansas*, 260 U. S. 346 (1922).

*Quaker City Cab Co. v. Penna*, 277 U. S. 389 (1928).

*Hanover Ins. Co. v. Harding*, 272 U. S. 494 (1926).

In *St. Louis S. W. Ry. v. Arkansas*, supra, the Court said at page 362:

> "Upon the mere question of construction we are of course concluded by the decision of the state court of last resort. But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the state court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State."

The tax in question is levied on an ad valorem basis, measured by the manufacturers' list price on November first of the year preceding the year for which the tax in question was levied. It is graduated according to the age of the car by a system of depreciation allowances (Gen. Stats. Minn. 1927, Sec. 2674). It is thus apparent that the tax is one on value. It is measured by ownership, not by use. Regardless of what the State Supreme Court may call it, the basis and measure of the tax show that it is a property tax and not an excise. As applied to property located on the Fort Snelling Reservation, it is therefore invalid.

*Surplus Trading Co. v. Cook*, 281 U. S. 647 (1930).

*Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525 (1885).
*Arlington Hotel Co. v. Fant*, 278 U. S. 439 (1929).

In *Hendrick v. Maryland*, 235 U. S. 610 (1915), and *Kane v. New Jersey*, 242 U. S. 160 (1917), the respective taxes were measured by horsepower, which, the Court held, bore a reasonable relationship to use of the highways. This is not true of a tax which is measured in the first instance by price, and which decreases with the age of the car.

Even taking this tax as characterized by the State Supreme Court, it would be invalid as applied to the Appellant. The State Court admitted that the character of the tax as a property tax extended to the whole of it, and that the elements of privilege tax and property tax were inseparable (R. page 10). To the extent that it is a property tax, it is invalid as applied to the Appellant; and since that part of the tax which is levied on Appellant's property is inseparable from that part which is levied on his privilege, the whole tax must fall.

## II.

EVEN REGARDED AS A PRIVILEGE TAX, THE TAX DENIES TO THE APPELLANT THE EQUAL PROTECTION OF THE LAWS BY IMPOSING ON HIM A GREATER BURDEN THAN IS IMPOSED ON RESIDENTS OF MINNESOTA.

As to residents of Minnesota, the tax is in lieu of all other taxes on motor vehicles. This is required by the provision of the Constitution of Minnesota authorizing the tax in question, being Section 3 of Article 16 thereof, as quoted above.

The effect of the tax is therefore to exempt motor vehicles owned by residents of Minnesota from ordinary property taxes. By the very nature of things such exemption cannot be granted

to motor vehicles owned by non-residents; they must still pay ordinary property taxes in the jurisdiction in which their vehicles are permanently located. There is thus a discrimination in favor of residents of Minnesota, by granting them an exemption which is not, and cannot be, extended to nonresident.

The case of *Walling v. Michigan*, 116 U. S. 446 (1885), presents the same point. There the State levied a tax on the sale of liquor manufactured outside the State, but not on the sale of liquor manufactured inside the State. The State also levied a tax on the manufacture of liquor within the State. It was argued that there was no discrimination, since liquor from within the State was taxed at the time of manufacture and liquor from without the State was taxed at the time of sale. This Court held the tax invalid, however, on the ground that liquor from without the State might also be taxed by the home state at the time of manufacture, and thus was liable to a heavier burden than domestic liquor. In like manner, motor vehicles of non-residents are subject to two taxes while those of residents of Minnesota are subject only to one.

This Court has repeatedly held that a taxing statute is invalid which denies to non-residents an exemption which is granted to residents.

*Travis v. Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920).

*Bethlehem Motors Corp. v. Flynt*, 256 U. S. 421 (1921).

*Hanover Ins. Co. v. Harding*, 272 U. S. 494 (1926).

Likewise the states may not impose an unconstitutional condition on granting a privilege which it may lawfully withhold.

*Terral v. Burke Const. Co.*, 257 U. S. 529 (1922).

The discrimination is the same whether the exemption is contained in the taxing statute itself, as in the cases above, or follows as a corollary to the statute from a constitutional provision, as in the instant case. In either case the State is making an unlawful differentiation against non-residents by denying to them an exemption which is granted to residents.

Furthermore, this tax is an unfair discrimination not only because it denies an exemption to non-residents, but because it imposes a heavier burden upon them for the privilege of using the highways than is imposed upon residents. It is well settled by the State decisions that as to residents this tax is in part at least a property tax.

*State v. Peterson*, 159 Minn. 269, 198 N. W. 1011 (1929).
*State v. Oligney*, 162 Minn. 302, 202 N. W. 893 (1925).
*Raymond v. Holm*, 165 Minn. 215, 206 N. W. 166 (1925).
*American Ry. Exp. Co. v. Holm*, 173 Minn. 72, 216 N. W. 542 (1927).

Therefore, only part of its burden, as laid on residents, is in return for the privilege of using the highways; the remainder is imposed because of ownership. As to non-residents, however, the only basis for taxability is the privilege of use of the highways, since admittedly a property tax would be invalid. As to them the only basis for the whole tax is the mere privilege of use. Thus for the privilege of use the state is taking one measure as applied to residents and another and greater measure, as applied to non-residents. This it may not lawfully do within the principle of *Travis v. Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920), *Bethlehem Motors Corp. v. Flynt*, 256 U. S. 421 (1921) and *Hanover Ins. Co. v. Harding*, 272 U. S. 494 (1926).

## III.

REGARDED AS A PRIVILEGE TAX, THE TAX DENIES TO THE APPELLANT THE EQUAL PROTECTION OF THE LAWS BY IMPOSING ON HIM A GREATER BURDEN THAN IS IMPOSED ON RESIDENTS OF NEIGHBORING STATES.

Under Section 2674 of Minnesota General Statutes 1927, motor vehicles not employed for hire within the State, owned by non-residents, and which have been properly registered under the laws of the country or state of the owner and which carry license number plates according to the laws of such state, are authorized to use Minnesota highways for periods of ten days at a time free of any registration or tax; and upon making proper filing with the Registrar of Motor Vehicles within the ten day period, they are authorized to keep their motor vehicles within the State and use its highways for a total period of ninety days without paying any tax or fee whatsoever.

Appellant is a non-resident of Minnesota (R. page 2). His car is registered and licensed at Fort Snelling, carries the license plates there issued, and is accompanied by the registration certificate issued by the Fort Snelling Registrar of motor vehicles (R. pages 2-3). He has indicated his willingness to comply with the provisions of the State Statute in regard to non-residents (R. page 3). Nevertheless the State Supreme Court has held that this exemption does not extend to the Appellant (R. page 11). It follows that residents of Iowa, North and South Dakota, Wisconsin and Canada, who live near the boundary line may drive their cars in Minnesota every day without paying any tax or fee whatsoever, provided only that their cars are not within the State for any continuous period of ninety days. A resident of the Fort Snelling Reservation, however, who so much as runs his car across the boundary line

into Minnesota and back again, must pay the total tax. The discrimination against Appellant in favor of residents of neighboring states is clear.

This Court has recognized this rule. It said in *Hendrick v. Maryland*, supra, at page 621:

> "If the statute is otherwise valid, the alleged discrimination against residents of the District of Columbia is not adequate ground for us now to declare it altogether bad. At most they are entitled to equality of treatment, and in the absence of some definite and authoritative ruling by the courts of the State, we will not assume that upon a proper showing this will be denied."

Again in *Kane v. New Jersey*, supra, at pp. 167-168, the Court said:

> "The Maryland law contained a reciprocal provision by which nonresidents whose cars are duly registered in their home State are given, for a limited period, free use of the highways in return for similar privileges granted to residents of Maryland. Such a provision promotes the convenience of owners and prevents the relative hardship of having to pay the full registration fee for a brief use of the highways. It has become common in state legislation; and New Jersey has embodied it in her law since the trial of this case in the lower court. But it is not an essential of valid regulation. Absence of it does not involve discrimination against nonresidents; for any resident similarly situated would be subjected to the same imposition. A resident desiring to use the highways only a single day would also have to pay the full annual fee."

In the *Hendrick* and *Kane* cases there was no inequality shown. In the present case the inequality is manifest.

This Court has repeatedly held that a state, even in a tax statute, may not make a classification which is not reasonably based upon practical differences in the subjects classified.

*Royster Guano Co. v. Virginia*, 253 U. S. 412 (1920).
*Kansas City So. Ry. v. Road Imp. Dist.*, 256 U. S. 658 (1920).
*Air Way Corp. v. Day*, 266 U. S. 71 (1924).
*Hopkins v. Southern Cal. Tel. Co.*, 275 U. S. 393 (1928).
*Louisville Gas Co. v. Coleman*, 277 U. S. 32 (1928).
*Quaker City Cab. Co. v. Penna.*, 277 U. S. 389 (1928).

There are no differences in fact between residents of Fort Snelling and of neighboring States which would justify the distinction made. As construed by the State Supreme Court, the statute denies to the Appellant the equal profection of the laws by denying to him privileges which are granted to residents of neighboring states and countries.

## CONCLUSION.

No matter how it may be characterized, the tax in question denies to the Appellant his rights under the Fourteenth Amendment of the Constitution of the United States. Viewed as a property tax, it denies him due process of law by taxing property which is beyond the jurisdiction of the State. Viewed as a privilege tax, it denies him the equal protection of the laws by imposing on him without reasonable justification more onerous burdens than are imposed either on residents of Minnesota or on residents of neighboring states and countries.

Respectfully submitted,

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